

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

GORDON E. NEUENSCHWANDER
EXECUTIVE VICE PRESIDENT
& GENERAL COUNSEL

G. EDWARD YURCON
ASSISTANT GENERAL COUNSEL

RICHARD A. PORACH
ATTORNEY

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RECORDATION NO. Filed 1425

JAN 14 1980 - 10 15 AM

INTERSTATE COMMERCE COMMISSION

January 11, 1980

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INTERSTATE COMMERCE COMMISSION

324 P&LE TERMINAL BUILDING
PITTSBURGH, PA. 15219
PHONE (412) 261-3201

0-0144045

Date JAN 14 1980

Fee \$ 50.00

ICC Washington, D. C.

Ms. Agatha Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, D. C. 20423

Dear Ms. Mergenovich:

Enclosed for filing with the Commission pursuant to Section 11303 of the Interstate Commerce Act are the original documents described below, together with four additional counterparts of each. The documents are:

Conditional Sale Agreement, dated as of December 19, 1979, between Greenville Steel Car Company and The Pittsburgh and Lake Erie Railroad Company, providing for the purchase of 220 100-ton open top hopper cars (P&LE Nos. 81780-81999, inclusive), and

Agreement and Assignment, dated as of December 19, 1979, between Greenville Steel Car Company and Pittsburgh National Bank.

In compliance with the Commission's rules and regulations, you are advised as follows:

VENDOR: Greenville Steel Car Company
P. O. Box 751
Greenville, Pennsylvania 16125

BUYER: The Pittsburgh and Lake Erie Railroad Company
P&LE Terminal Building
Pittsburgh, Pennsylvania 15219

ASSIGNOR: Same as Vendor above

ASSIGNEE: Pittsburgh National Bank
Fifth and Wood Streets
Pittsburgh, Pennsylvania 15222

C. H. Kunkel

Ms. Agatha Mergenovich

January 11, 1980

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The following is a general description of the railroad rolling stock covered by said documents:

<u>No. of Units</u>	<u>Description</u>	<u>A.A.R. Mechanical Designation</u>	<u>Identifying Road Nos.</u>
220	100-ton open top hopper cars	HT	P&LE-81780-81999, inclusive

Each of the units of rolling stock subject to the Conditional Sale Agreement has been marked on each side thereof with the following words:

"Ownership Subject to a Security Agreement
Filed with the Interstate Commerce Commission."

There is also enclosed Pittsburgh and Lake Erie Railroad Company voucher in the amount of \$50.00, payable to the Treasurer of the United States, to cover the recordation fee.

Please acknowledge receipt at your earliest convenience by stamping and returning to me the original documents, together with two counterparts.

Very truly yours,

Gordon E. Neuenachwander

encs.

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AGREEMENT AND ASSIGNMENT

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT, dated as of December 19, 1979 between GREENVILLE STEEL CAR COMPANY (hereinafter called the "Owner") and PITTSBURGH NATIONAL BANK, a national banking association with offices at Pittsburgh National Building, Pittsburgh, Pennsylvania 15222 (hereinafter called the "Assignee").

WHEREAS, the Owner and The Pittsburgh and Lake Erie Railroad Company, a Delaware corporation (hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement dated as of December 19, 1979 (hereinafter called the "Conditional Sale Agreement") covering the sale, on the conditions therein set forth, by the Owner and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment hereinafter called the "Equipment").

NOW, THEREFORE, this Agreement and Assignment Witnesseth that, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Owner, the receipt of which is hereby acknowledged, as well as the mutual covenants herein contained:

SECTION 1. The Owner hereby sells, assigns, transfers and sets over to the Assignee, its successors and assigns:

(a) All the right, title and interest of the Owner in and to the Equipment and each unit thereof when and as severally delivered to and accepted by the Railroad and as to each such unit upon payment to the Owner of the amount required to be paid under Section 5 hereof with respect thereto;

(b) All the right, title and interest of the Owner in and to the Conditional Sale Agreement in respect of the Equipment (except the right to deliver the Equipment and the right to receive the payment specified in sub-paragraph (a) of the third paragraph of Article 4 thereof and in the last paragraph of Article 15 thereof, and reimbursement for taxes paid or incurred by the Owner, as provided in Article 5 thereof) and in and to any and all amounts which may become due and owing by the Railroad to the Owner under the Conditional Sale Agreement on account of the Railroad's obligations in respect of the purchase price of the

Equipment and interest thereon and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement other than those hereinabove excluded; and

(c) All of the Owner's rights, powers, privileges and remedies under the Conditional Sale Agreement (except as limited by subparagraph (b) of this paragraph);

without any recourse, however, against the Owner for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, provided, however, that this Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Owner to deliver the Equipment in accordance with the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Owner under Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Owner to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Owner. In furtherance of the foregoing assignment and transfer, the Owner hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Owner, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owner covenants and agrees that the Equipment is constructed in accordance with the Conditional Sale Agreement and has been or will be delivered to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Owner. The Owner further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the

Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Owner further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Owner to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Owner covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, the unpaid portion of the purchase price or to enforce any provision of the Conditional Sale Agreement, the Owner will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Owner of any obligation in respect of the Equipment or the construction, delivery, guaranty or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Owner. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Owner and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Owner under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Assignee shall give notice to the Owner of any suit or proceeding by the Assignee herein described and will move or take other appropriate action on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, set-off or counterclaim asserted by the Railroad therein, and if the Court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, set-off or counterclaim as a tryable issue in such suit or proceeding, the Assignee will notify the Owner thereof and the Owner will thereafter be responsible under its indemnity and will be given the right by the Assignee, at the Owner's expense, to settle or defend such defense, set-off or counterclaim.

Except in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or

purported to be developed by the Owner, and articles and materials specified by the Railroad and not manufactured by the Owner, the Owner agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction of the Equipment by Owner, or any unit thereof, of any design, system, process, formula, combination, article or material infringing or claimed to infringe on any patent or other similar right.

The Owner agrees that any amount payable to it by the Railroad, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Owner the amount to be paid under Section 5 hereof.

SECTION 4. The Owner covenants and agrees that it will cause to be plainly, distinctly, and conspicuously marked on each side of each unit of the Equipment, at and from the date of this Assignment, in letters not less than one inch in height, the following legend:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION."

SECTION 5. The Assignee, on the Closing Dates fixed as provided in Article 4 of the Conditional Sale Agreement but in no event later than August 1, 1980 shall pay to the Owner the aggregate sum of \$7,920,000.00 provided that there have been delivered to the Assignee and its counsel hereinafter mentioned the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its counsel:

(a) A Bill of Sale from the Owner to the Assignee, transferring to the Assignee title to the units of the Equipment and warranting to the Assignee and to the Railroad that at the time of delivery thereof to the Railroad the Owner had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and covenanting to defend the title to such

units against the demands of all persons whomsoever based on claims originating prior to delivery of such units under the Conditional Sale Agreement.

(b) The Certificates of Acceptance with respect to the units of Equipment contemplated by Article 3 of the Conditional Sale Agreement;

(c) Duplicate invoice or invoices for the units of the Equipment having endorsed thereon an approval by the Railroad as to the correctness of the invoice price of such units;

(d) An opinion of Tucker Arensberg Very & Ferguson, Pittsburgh, Pa., Counsel for the Assignee, stating that (i) the Conditional Sale Agreement and the Railroad's Acknowledgement of Notice annexed at the foot of this Agreement and Assignment have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the Owner and is a valid and binding instrument enforceable in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (iii) the Assignee is vested with all the right, title and interest of the Owner in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or of any governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, (vi) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act and that no other filing or recordation or depositing is necessary for the protection of the rights of the Assignee in any State of the United

States of America, (vii) no marking of the Equipment other than as provided in Section 4 is required to protect the rights of the Assignee in and to the Equipment, and (viii) registration of the Conditional Sale Agreement or the Agreement and Assignment or the interest acquired therein is not required under the Securities Act of 1933, as amended.

(e) An opinion of counsel for the Owner stating that (i) the Conditional Sale Agreement has been duly executed and delivered by the Owner and is a valid instrument binding upon the Owner and enforceable against it in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (ii) this Agreement and Assignment has been duly executed and delivered by the Owner and is a valid instrument binding upon the Owner and enforceable against it in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (iii) the Assignee is vested with all the right, title and interest of the Owner in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of claims, liens and encumbrances originating by, from or through the Owner except only the rights of the Railroad under the Conditional Sale Agreement and (v) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Owner is now a party or constitute a default thereunder;

(f) A favorable opinion of counsel for the Railroad dated as of the Closing Date covering the matters referred to in paragraph (d) of this Section 5 and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and other states where it

conducts its business and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there are no conditions, restrictions or requirements in the documents constituting the corporate charter or By-laws of the Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof and (iii) neither the execution and delivery of the Conditional Sale Agreement, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder; and

(g) A certificate from a duly authorized officer of the Railroad, duly attested and sealed, stating that the Equipment or any unit thereof is not subject to any lien, encumbrance or charge, except for the rights of the Railroad under the Conditional Sale Agreement, and that title to the Equipment or any unit thereof has not passed or been transferred to the Railroad; and

(h) Unless payment of the amount payable pursuant to subparagraph (a) of the second paragraph of Article 4 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a counterpart of the receipt from the Owner for such payment.

It is understood and agreed that, in furnishing opinions pursuant to subparagraph (d) of this Section 5, Counsel for the Assignee may rely on the aforementioned opinions of counsel for the Owner and counsel for the Railroad.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Owner hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed and delivered by it for a valid consideration, that it has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Owner is concerned, a valid and existing agreement binding upon the Owner and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. This Agreement and Assignment shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 11303 of the Interstate Commerce Act.

SECTION 9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement and Assignment is dated as of December 19, 1979 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owner and the Assignee, pursuant to due corporate authority, have respectively caused this instrument to be executed in their corporate names by their duly authorized officers and their corporate seals to be hereunto

affixed and duly attested, all as of the date first above written.

ATTEST:

John R. Young
Assistant Secretary

ATTEST:

Jack R. Fenton
CBO

GREENVILLE STEEL CAR COMPANY

By Edward H. Moore
Vice President

PITTSBURGH NATIONAL BANK

By Frank Murray
V.P.

SCHEDULE A
TO
AGREEMENT AND ASSIGNMENT

<u>TYPE</u>	<u>QUANTITY</u>	<u>ROAD NUMBERS</u>
100-ton open-top hopper car	220	P&LE 81780 - P&LE 81999 (inclusive)

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this 11th day of January, 1980, before me personally appeared Edward A. Woods, to me ^{well} personally known, who being by me duly sworn, says that he is President of GREENVILLE STEEL CAR COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Caroline B. Hodge
Notary Public

My Commission Expires: Mar. 16, 1982

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this 11th day of January, 1980, before me personally appeared Frank Murraft, to me personally known, who being by me duly sworn, says that he is Vice President of PITTSBURGH NATIONAL BANK, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Anna M. Clair
Notary Public

My Commission Expires:
ANNA M. CLAIR, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES NOV. 19, 1983
Member, Pennsylvania Association of Notaries

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

The Pittsburgh and Lake Erie Railroad Company hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of December 19, 1979.

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

January 11, 1980

By H. S. Allyn, Jr.
President